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**U.S. DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Matthew-Lane: Hassell,
Plaintiff

V.

Devin Aileen Kimbark
DOES 1 - X
Defendant/(s)

CIVIL ACTION NUMBER: 1:23-cv-472-JL-AJ

U.S. District Court
District of New Hampshire

RESPONSE TO MOTION FOR DISMISSAL WITH PREJUDICE

9 Pages (attachments 18 pages)

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21st of November, 2023

Comes now, Matthew-Lane; Hassell (here and after, known as Matt and/or Plaintiff), a Propria Persona Sui Juris, who respectfully requests that this Honorable Court, grant him the relief sought and states as follows;

It appears Mrs. Kimbark already knows that I have standing in the Court and this Court does have Jurisdiction. She is asking for a continuance because she knows her motion should be denied.

1. In point 1 of your Motion it is claimed that "Plaintiff is not filing this claim in good conscience and good faith, and as required by the law the complaint failed to state a claim that the law recognizes as enforceable against Cheryl L. Kimbark. In good faith. Why should I have to go to the courts to see my child? Because Devin Kimbark and you and your husband (Mark Kimbark) do not even know what good faith is. I have never hurt Devin and I have never hurt Phoenix and yet you and your

family deny me my natural right to Devin Kimbark and my child. In a world of deadbeat dads, I say I want to be there for my child and you and each of you say no. So please explain honor and integrity and good faith to me.

As decided in *BELL et al. vs. HOOD et al.* 66 S.Ct. 773 (1946).

Where federally protected rights have been invaded, courts will be alert to adjust their remedies so as to grant the necessary relief. Where legal rights have been invaded and federal statute provides for a general right to sue for such invasions, federal courts may use any available remedy to make good the wrong done. Also see *UNITED STATES vs. LEE*.

KAUFMAN and another vs. *SAME*. (1882) and also see section II of the claim entered, the law establishing Jurisdiction and Venue was provided.

This matter is promulgated from a family matter in State Court, that has been ongoing for a year now; Case Number: 456-2022-DM-00737, that you Mrs. Kimbark, along with your husband, who are harboring your daughter (Devin Kimbark) in her acts. Therefore you Mrs. Kimbark are a co-conspirator and are liable and culpable for depriving me of my natural rights to our (Devin Kimbark and my) daughter. The moment the district (state) judge (administrator, magistrate, judge, and any such title) denied me equal access to the child, the judge was in violation and therefore his orders are void. So what Devin and others are doing is choosing to deny me of rights under color of law, which while this venue is not correct for criminal sanctions, this is the correct venue for civil sanctions.

Furthermore, I have tried to remedy such matter in the State Court in good faith. I have been unsuccessful and have been given no 5th Amendment protection of due process of law, and I have brought such complaints (Constitutional violations and Federal and State claims) that have been contested and denied and/or rejected and/or no medium of response reasonable under the circumstances. Mrs. Kimbark you are a witness in the Court for when such complaints were raised (records of such hearings shall be provided to the jury as evidence).

2. Point 1 also claims Plaintiff has not provided any fact or common-sense details to support a demand for any financial compensation. The judge does not have immunity from prosecution and therefore you as well may be brought to a jury to decide common sense details. It may come down to if the judge is protected by the 11th Amendment. The burden (now) shifts to the judge to prove his (the judge's) denial of equal protection of the law, denial of due process and violations of other rights of mine, which the judge committed, are part of his job. That may or may not blanket you from civil liabilities. I contend they do not. However, in accordance with the 'Sunshine Act' (Title 5 U.S. Code Section 552h (b)), the burden is now on the judge to prove he was protected and his actions are part of his job description. It puts the burden on the agency to justify its action.

I am suing you in your individual capacity. You chose to make false allegations against me. You chose to support your daughter and deny me fair and equal access to the child. I have shared statistics, which prove

how poorly children raised by single mothers have done over the past few decades and still you are here today, fighting me so when you win, you and Devin and Mr. Kimbark put Phoenix at the worst possible statistical chance to grow up happy and 'normal.'

The simple things I am asking for is fair. I want equal time with my daughter. Both the New Hampshire and the United States constitutions protect it and you and your family deny me that basic right, yet you say I am not acting in good faith? You are failing as a person. If I was the monster (you and your family are) and denied Devin rights to the child, you would beg me and then you would call police and then you would go to the courts, just like I did. The fact is that you and your family are dishonorable to deny a loving father the rights and responsibilities of her care and protection. The moment that things got tough for Devin and I, you teach her to run, to be irresponsible and disloyal.

3. Point 2 in Defendants Motion, it is claimed that the sanctions sought under Title 18 § 3571 against Mrs. Kimbark is frivolous and false claim, wasting the Courts time and is not applicable to Mrs. Kimbark because she has not been found guilty of any offense and not subject to a fine. Mrs. Kimbark may be unaware of why a trial by Jury is what is needed for this matter, but that is to let a jury be made aware of all factors with full disclosure, not mere conclusory allegations by the Kimbark family and determine if she is to be found guilty of a crime and shall have sanctions imposed upon her for such.
4. In point 3 of Defendants Motion, it is claimed yet again, Plaintiffs lawsuit against Mrs. Kimbark referencing NH Revised Statute 626:8 Criminal Liability for Conduct of Another, is a frivolous and false claim, because Plaintiff failed to state a claim the law recognizes as enforceable. Again I will have to point out section II of Plaintiff's initial complaint claim for Mrs. Kimbark, specifically "This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff's state law claims that are related to Plaintiff's federal claims".

As the multiple citation within Blankenship v. Napolitano, 451 F. Supp. 3d 596 (2020); On motion to dismiss for lack of personal jurisdiction, court may consider affidavits submitted by both parties, but it must resolve factual disputes and draw all reasonable inferences in favor of the party asserting jurisdiction; the court must then determine whether the facts proffered by the party asserting jurisdiction make out a case of personal jurisdiction over the party challenging jurisdiction.

Fed. R. Civ. P. 12(b)(2), In judging minimum contacts, for purposes of personal jurisdiction, a court properly focuses on the relationship among the defendant, the forum, and the litigation, General personal jurisdiction is considered "all purpose" jurisdiction as it permits a court to assert jurisdiction over a defendant based on a forum connection unrelated to the underlying suit, Documents filed pro se are to be liberally

construed, and must be held to less stringent standards than formal pleadings drafted by lawyers,

“A motion to dismiss tests the sufficiency of a complaint.” *Occupy Columbia v. Haley*, 738 F.3d 107, 116 (4th Cir. 2013). The court’s evaluation is therefore “generally limited to a review of the allegations of the complaint itself. However, [the court] also consider[s] documents that are explicitly incorporated into the complaint by reference....” *612 *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165–66 (4th Cir. 2016) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007)).

Application of the Rule 12(b)(6) standard requires that the court “‘accept as true all of the factual allegations contained in the complaint.’” *Erickson*, 551 U.S. at 94, 127 S.Ct. 2197 (quoting *Twombly*, 550 U.S. at 555-56, 127 S.Ct. 1955). The court must “draw all reasonable inferences in favor of the plaintiff,” *Kensington Volunteer Fire Dep’t, Inc. v. Montgomery Cty., Md.*, 684 F.3d 462, 467 (4th Cir. 2012), but the court is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences, *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002). Determining plausibility “does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence” of the alleged wrongdoing. *Twombly*, 550 U.S. at 545, 127 S.Ct. 1955. “[A] Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff’s complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff’s favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief.” *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999),

Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure authorizes a federal court to exercise personal jurisdiction over a defendant in the manner provided by state law. See *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 622 (4th Cir. 1997).

5. In point 4 of Defendants Motion Mrs. Kimbark appears to just recite and attempt to make a deceptive narrative and mere allegations, that the claims against her are frivolous and false, and Petitioner has failed to state a claim the law recognizes as enforceable, while also citing some of the laws that Plaintiff has sought against her and has had served upon her as well. This also appears to be a similar recitation of the Officer of the Court representing her daughter (Devin Kimbark) in the State Court Case mentioned above. If the claims are not recognized in the State Court and the Federal Court, where does Mrs. Kimbark imagine anything is to be recognized, except her and her families double standard claims? The U.S. Supreme Court and/or the U.S. Court of Federal Claim? The fact is Mrs. Kimbark and her husband Mark Edward Kimbark financially and emotionally support their daughter (Devin Kimbark) in perjury and statements generally (18 U.S. Code § 1001 - Statements or entries

generally), amongst other State and Federal violations and the natural and inherent and unalienable equal rights, that are State and Federally Constitutionally protected that both the U.S. Supreme Court and the State of New Hampshire Supreme Court have previously decided on.

Mrs. Kimbark you are making a mockery and fallacy out of the Court to defraud and/or scheme (18 U.S. Code § 1346. Definition of “scheme or artifice to defraud”) to not be held liable and culpable for her purposely and knowingly and willingly conduct and that of her daughter as well.

6. In point 5 of Defendants Motion, just another recite of being frivolous and false, but this time of the State claim by Plaintiff of NH Revised Statute 633:2 Criminal Restraint, which the Court has Supplemental Jurisdiction of, by the law 28 U.S.C. § 1367 as cited above and in the original complaint in Section II. It goes on to state the Family Court in this matter deemed Plaintiffs supervised visitation at 3 Stoneleigh Dr. appropriate and valid given Plaintiffs obvious instabilities and questionable judgements.

As decided by THE WESTERN MAID. UNITED STATES vs. THOMPSON, District Judge, et al. THE LIBERTY. UNITED STATES vs. MORTON, District Judge, et al. THE CAROLINIAN. UNITED STATES vs. ROSE, District Judge, et al. 42 S.Ct. 159 (1922) The authority that makes the law is itself superior to it, and if it consents to apply to itself the rules that it applies to others, the consent is free and may be withheld.

7. In point 6 of Defendants Motion, which recites the same claims by Defendant but highlights N.H. Revised Statute 633:3 (see previous points in this motion) also stating again the Court deemed his supervised visitation as appropriate given previous alcohol violations and violence and they have supporting documentation that outlines Plaintiffs lack in Judgment (Arrest # 20-563-AR). The fact is, Plaintiff has to risk himself to the hands of you and Devin Kimbark and Mark Kimbark (my accusers) and restrain and imprison myself and remain where I do not wish to remain to enjoy the love and companionship of Devin Kimbarks and my child or else I could lose any and possible all rights to Devin and my child.

As decided by Black vs. Clark's Greensboro, Inc., 263 N.C. 226, 139 S.E.2d 199, 201 (1964). Any exercise of force, or expressed or implied threat of force, by which in fact the other person is deprived of his liberty, compelled to remain where he does not wish to remain, or go where he does not wish to go, is an imprisonment and Fox v. McCumin, 205 Iowa 752, 218 N.W. 499, 501 (1928); Sergeant v. Watson Bros. Tramp. Co., 244 Iowa 185, 52 N.W.2d 86,93 (1952). Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets and Daniels vs. Milstead, 221 Ala. 353, 128 So. 447, 448 (1930); De Armond vs. Saunders, 43 Ala. 263, 9 So.2d 747, 751 (1942). In false imprisonment, the essence of the tort is that the plaintiff is forcibly

deprived of his liberty, and the good intent of the defendant, or the fact that he had probable cause for believing that an offense was committed, and acted in good faith, will not justify or excuse the trespass.

Furthermore, your so-called supporting documentation is a deceptive narrative and does not give proper context or full disclosure of facts and does not clarify Devin Kimbark was first hand involved with the most recent 4 events between 2019 and 2021, everything else of the so-called proof to your “smear campaign” stems back more than 15 years. I have done my time for my past transgressions. I have paid my debt to society and have improved myself since, how long must I endure you and your family libel and slandering my good name to deprive me of my natural and unalienable rights to Devin Kimbarks and my child?

8. Point 6 goes on to state no one interferes substantially with Plaintiff..., and his physical movements are not limited. This appears to be Prima Facie Evidence that you (Mrs. Kimbark) are admitting to some form of interference with my movements and therefore also my custody and that would be a separate violation of 25 CFR § 11.405 - Interference with custody and N.H. Rev. Stat. § 633:4 II, during my “visitation”, just not substantially to your “double standards”. That is what a jury is to decide, not you, Mrs. Kimbark. There is no clear evidence to support that I am a threat or danger to prevent the minor child and me of fair and equal protection under the law and to have equal custodial rights as Devin Kimbark to our child.
9. In Point 7 of your Motion, it highlights the claim of perjury that a jury trial and the facts to be presented to said jury, will prove Devin Kimbarks perjury and statements generally, that you and your husband shall also be liable and culpable for. One such claim by Devin Kimbark for a reason given to the State Court, to deprive me of our child is, that I have no family in the State of New Hampshire and she fears I will abscond with our child if I am left alone with our child. You and your family were and are well aware I have family in the State of New Hampshire and the extent of litigation and the burden of loss(es) to me have forced me to move in with my father at 20 Arlington St. Unit D, Nashua, N.H. 03060.
10. In point 8 of Defendants Motion the highlight is of “false Swearing”, Mrs. Kimbark states she contacted the Manchester Police Department on 11/12/22, to request a welfare check for Devin Kimbark and our minor child. The dispatch phone call will prove to the Jury that it is false and further a perjury claim by Mrs. Kimbark. Plaintiff shall provide the dispatch phone call for discovery.
11. Points 9 and 10 and 11 and 12 of Defendants Motion correlate to point 14 of this response. See point 10.

12. In point 13 of Defendants Motion, Mrs. Kimbark claims she did in fact have first hand knowledge from the phone call she was having with Devin Kimbark of the false incident instigated by the Kimbark family. The dispatch phone call will also prove this is another perjury claim by you, as you told the dispatch operator you had got your information by text. Devin Kimbark either gave you and/or your family false claims as to what was going on through text or you and your family conspired the whole incident together.
13. In point 14 of Defendants Motion it states "its abundantly clear that Plaintiff is not satisfied with the lower Courts decisions that are in favor of the Defendants daughter Devin Kimbark, and claims (who has solely cared for our child.)" I have to ask who would be satisfied with being deprived of their child, especially by the false claims and libel and slanderous means it's being done with, that has led the Court into error. How, if you and your Husband (Mark Kimbark) is providing financially for Devin Kimbarks needs, is Devin Kimbark solely providing for our child's needs. The fact is she is not capable of doing such and it's her family members that are taking care of both Devin Kimbark and our child and depriving me of my rights with nothing more than false claims and red herring fallacies and libel and slanderous means.
14. Point 14 goes on to state "every person involved with this case is subject to the Plaintiffs offensive and unverified allegations.... Again, this proves the need for a trial by Jury, to see what several competent members of the community will decide, if the claims I have made are offensive and unverified or if the Defendants have in fact trespassed against Petitioner and shall be held liable and culpable and to add to that, I get my verification through multiple citation and decisions by U.S. Supreme Court(s) as well as other Superior/Supreme Court(s) decisions. Where do you get your verifications from?
15. Point 14 goes on to state "they" have spent a small fortune in the family court....." In the family court, Officer of the Court Jennifer L. DiTrapano through and by Devin Kimbark repeatedly attempts to coerce the contract payments of Devin Kimbark onto me, claiming Devin Kimbark continues to accrue fees to litigate, when in fact you (Mrs. Kimbark) have just proven you and your husband are the ones financially providing Devin Kimbarks means of representation to deprive me of Devin Kimbarks and my child through the lower courts. I have entered multiple conditional acceptance into the lower court for not only the contracting of payments but also for drug testing (as Devin Kimbark has claimed Plaintiff is a drug user without proof), that I also wanted to add on my own accord, four (4) times a week alcohol testing, for both Devin Kimbark and myself. This would not only disprove Devin Kimbarks claims that I am a drug user and alcohol abuser, this would prove I no longer indulge in any alcohol beverages ever. It is Devin Kimbark who does not want to be held to

equal protection under the law and equal standards (if Devin Kimbark is not lying about her own usage(s), whatever they may be, then why would she not want this?) that your family only wants to be placed upon me.

16. In point 15 of Defendant's Motion is a further red herring fallacy and a narrative to a statement that the Administrative agent did not allow me to finish in the lower court but is stated in the JURAT/AFFIDAVIT OF TRUTH/CONTRACT (attachment provided) entered into the lower Courts. The term sovereign citizen is an oxymoron and was even said in court, to which you and your husband are a witness to. Also furthered with New Hampshire State Constitution Article 7 State Sovereignty. Again, this is what a Jury is for. I also state that if there was any form of due process of law and equal protection under the law in the State Court, I would not have had to bring this matter into the Federal Courts. I have been left with no other choice and I have exceeded the burden of proof beyond mere conclusory allegations to give the Court merit to rule in my favor. If that can not be ascertained then this must go to the Jury.
17. Furthermore, I have provided in the Points and Authorities section of the original complaint, multiple U.S. Supreme Court Decisions to give cause and merit for my claims. I also challenge and contest and rebuke and rebuttal the factualness and accuracy of your Historical Section by simply providing some of the communications I was unsuccessful in attempting to have with your daughter before the hearing held on the 30th of November, 2023 (see attachments) and that a trial by jury is the only appropriate means to this matter, if the Court finds the burden of proof has not been met and further litigation is necessary.
18. I also challenge and contest the factual and accuracy of the claim you made a good faith attempt for any concurrences. If the concurrence you Mrs. Kimbark are speaking of is a seemingly intoxicated phone call made by your husband (Mark Kimbark) at 11 pm. on the 12th of November, 2023 to which he left a voicemail and I have responded to by CERTIFIED USPS mail (see attachment) on the 14th of November, 2023. All that Mr. Kimbark stated is "he" was looking to make an agreement in good faith and that can't be ascertained." Nothing about you Mrs. Kimbark was stated. Showing once again all you and your family offer the Court is fraudulent and deceptive and manipulative claims and either do not know what good faith is or simply do not operate with any.
19. Now, I appreciate your false statements and allegations and libel and slanderous claims and red herring fallacies to include but not limited to your nonsensical historical section, but I would like you Mrs. Kimbark to make these claims under penalty of perjury and pains. I'm betting you Mrs. Kimbark will not.

WHEREFORE, Petitioner, Matthew-Lane: Hassell, a Propria Persona Sui Juris, respectfully demand and instruct that this Honorable Court Honor and Order the following relief:

- A. Grant Plaintiff immediate 50/50 custodial grantorship of minor child with retroactive custodial parenting time to start immediately;
- B. Order both parties enjoy equal decision making responsibilities of child daycare and school and medical care, etc., and each party is to reimburse the other party for out-of-pocket expenses;
- C. Order an immediate Cease and Desist to the Bureau of Child Support Services wage garnishment and arrearages being sought against Petitioner and return all wages and arrearages unlawfully extorted;
- D. Deny Defendants Motion to Dismiss with Prejudice;
- E. Deny Defendant an additional 60 days to provide an official 'Answer to Claims', Plaintiff will Conditionally accept in a good faith and honorable attempt, to an additional 10 days; I remind Mrs. Kimbark of N.H. Rules of Civil Procedure 1, which authorizes a need for speedy resolution;
- F. Honor any such further relief as justice may require.

VOID WHERE PROHIBITED BY LAW

ALL RIGHTS RESERVED WITHOUT PREJUDICE 1-308

Date: 21st of November, 2023
Matthew-Lane: Hassell

Matthew-Lane: Hassell authorized agent of
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Platsky v. C.I.A. United States Court of Appeals, Second Circuit Nov 24, 1991, 1953 F.2d 26 (2d Cir. 1991). Reversing district court for dismissing pro se complaint for lack of standing without explaining formalities of pleading and affording pro se plaintiff an opportunity to replead.

I certify that a copy of the above mentioned motion has been hand delivered and/or sent by USPS mail to Cheryl L. Kimbark.